COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation Into Rate of Penetration For Discounted Electric, Gas and Telephone Service	)	D.T.E. 01-106-A

MOTION FOR RECONSIDERATION (IN PART), OR IN THE ALTERNATIVE, MOTION FOR CLARIFICATION

Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric ("NSTAR Electric") and NSTAR Gas Company (collectively, "NSTAR" or the "Company") hereby petition the Department of Telecommunications and Energy (the "Department") for reconsideration (in part), or, in the alternative, clarification of its decision in Investigation Into Rate of Penetration For Discounted Electric, Gas and Telephone Service, D.T.E. 01-106-A, issued August 8, 2003 (the "Order"). The Order addresses the establishment of a computer-matching program for electric distribution companies ("electric companies") and local gas distribution companies ("gas companies") relating to their respective low-income discount rate programs.

By this Motion, NSTAR respectfully seeks reconsideration of the Department's directive to jurisdictional gas and electric distribution companies to begin implementation of a computer-matching program without an investigation of the costs involved and the bill impacts for customers who will subsidize the low-income discount rate, the development of a mechanism to allow for cost recovery, and other logistical details that would need to be completed prior to the implementation of the data-sharing program. In

the alternative, NSTAR seeks clarification of the Department's Order regarding the timing of the implementation of the Order.

I. STANDARD OF REVIEW

With regard to motions for reconsideration, the Department's Procedural Rule, 220 C. M. R. s. 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987). A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone

and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

With regard to motions for clarification, the Department's standard of review for clarification of its decisions is well-settled. The Department has stated that "[c]larification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning." Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). "Clarification does not involve reexamining the record for the purpose of substantively modifying a decision." Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

The Order requires electric and gas companies to share their customer data with the Executive Office of Health and Human Services ("EOHHS") for purposes of matching such data with the EOHHS's MassCARES state beneficiary database in order to identify individuals that may be eligible for low-income discount rate programs. Order at 13. However, as demonstrated in this Motion, the Order requires, as conditions precedent to the sharing of customer data, that: (1) the EOHHS and its sub-agencies obtain permission from their clients to allow it to "match" utility customer data with EOHHS client data; and (2) electric and gas companies allow their customers to opt-out of participating in the data sharing program. In addition, the Order also states that the Department will address electric and gas company cost-recovery issues as they relate to implementation of the data-sharing program.

However, the Order does not rely on an evidentiary record regarding the cost and bill impacts to customers, and does not lay out a timeline that would call for the completion of these prerequisites prior to implementation. The Company believes that, based on the language of the Order, each of these "action items" must occur prior to the successful implementation of the Department's data-sharing directive. Accordingly, the Company requests that the Department reconsider its Order regarding commencement of data sharing without first developing an evidentiary record regarding: (1) the expense, revenue and bill impacts of the Order on residential customers; (2) a rate recovery mechanism to allow electric and gas companies to collect costs and lost revenue relating to implementation of the Order; and (3) the procedures to be undertaken by the EOHHS to receive sufficient authorization from its clients to share their data with gas and electric companies pursuant to the Order. In the alternative, the Company requests that the Department clarify its Order regarding whether the electric and gas companies should commence implementation of the Department's directives in the Order only after the above-referenced issues have been resolved.

II. THE DEPARTMENT SHOULD RECONSIDER IN PART OR, IN THE ALTERNATIVE, CLARIFY, ITS ORDER REGARDING THE TIMING OF ITS IMPLEMENATION

NSTAR requests that the Department reconsider in part, or in the alternative, clarify, its Order regarding the timing of its implementation. The Department specifically ordered all electric and gas companies to "electronically transfer residential customer account information on a quarterly basis to EOHHS for an electronic matching program with the MassCARES datatbase" for the purpose of facilitating the enrollment of customers in utility discount rate programs." Order at 13. However, the Order did not

state specifically when the Department was requiring electric and gas companies to begin sharing their customer data with EOHHS. As discussed infra, the Order references actions that must be taken by the electric companies, the gas companies and the EOHHS that, when read in context with the Department's data-sharing directive, suggest that such actions should occur prior to the commencement of data-sharing.

In addition, the Department's Order referenced a second phase of the Department's investigation that will focus on issues relating to the recovery by electric and gas companies of costs relating to the implementation of the Department's data-sharing directives. Should the Department allow a delay in the implementation of the Order until such cost recovery issues are resolved, the Department will avoid having electric and gas companies incurring costs that may not be recoverable. Accordingly, the Company requests that the Department clarify its Order to allow electric and gas companies to implement the sharing of customer data with the EOHHS via a computer matching program only after the following actions occur: (1) the EOHHS notifies the Department that it has revised its applications for income-eligible governmental programs under its jurisdiction (e.g., Department of Transitional Assistance ("DTA") and Division of Medical Assistance ("DMA") programs) and has received permission from such clients to have their client status disclosed to electric and gas companies; (2) the electric and gas companies notify their customers of the opportunity to opt-out of sharing their customer data with the EOHHS; and (3) the Department issues a final order(s) regarding how electric and gas companies will recover costs relating to implementing the Order.

With regard to the first "action item," the Order included a finding that "a computer matching program with EOHHS would be the most effective approach for

identifying and enrolling eligible customers on discount programs." Order at 10. However, the Department noted in the Order that it has entered into a Memorandum of Understanding ("MOU") with EOHHS and DTA to incorporate language on their applications that would "give the agencies authorization to release customer eligibility information." Id. Moreover, the Department also notes that:

> [w]hile DTA has committed to include language on future applications authorizing the agencies to share eligibility information with utilities, DTA has not specified the manner in which the new language will be presented on applications. The Department defers to the expertise of DTA in regard to the appropriate manner of notifying beneficiaries of the confidential transfer of data to utility companies. Id. n.4.

The Order specifically states that the Department "recognizes that it will take approximately one year from the date agencies begin using applications with language authorizing the release of eligibility information to utilities to implement the computer matching program" and further states that, "[i]n the interim, the Department will require utilities to continue current enrollment procedures." Id. at 10.

Based on these provisions of the Order, the Department recognizes that neither the EOHHS nor the DTA has proper authorization from the agencies' clients to share their client status with the electric and gas companies. As noted by NSTAR in prior comments filed with the Department in this proceeding, the Company believes that the DTA has specific regulations that explicitly protect the disclosure of personal data, in certain circumstances (see 106 C.M.R. 104.080 and 106 CMR 104.110; see also G.L. 271, § 40).

Accordingly, until the EOHHS and the DTA have implemented the application changes referenced by the Department and each agency has received proper authorization from their clients to share their client status with the electric and gas companies, it is

unclear whether the EOHHS will be able to "match" its client data with data provided with by the electric and gas companies. Because of this uncertainty regarding when EOHHS will be "ready" to match its client data, the Company requests that the Department clarify its Order to specify that electric and gas companies are not required to share customer data with EOHHS pursuant to the Order unless and until the EOHHS and the DTA have notified the Department that they have sufficient permission to share their client data with the electric and gas companies.

Second, in addition to action by the EOHHS, the electric and gas companies must also take action on an item prior to sharing customer data with the EOHHS via a computer matching program. The Order requires each electric and gas company to issue bill inserts notifying customers of their right to opt out of having their customer information released to EOHHS. Order at 12. However, the Order was unclear regarding when the electric and gas companies are requested to issue such bill inserts.

Therefore, the Company requests that the Department clarify its Order to state that electric and gas companies need not commence notifying customers of their right to opt-out of the data-sharing program unless and until the EOHHS has notified the Department that the EOHSS has received sufficient authorization to share its client data with the electric and gas companies. The Company believes that this clarification is appropriate based on the fact that the EOHHS may not have sufficient authorization from its clients to match its data for some time in the future, perhaps over a year. Accordingly, it would appear to be an inefficient use of resources for electric and gas companies to issue bill inserts in the near term providing customers with the right to opt-out of the data-sharing program if the "sharing" will not take place for several months. Therefore,

the Company requests that the Department clarify its Order to state that electric and gas companies should provide opt-out notices to customers only after the EOHHS provides notification to the Department that it is ready to receive customer data from the electric and gas companies pursuant to the Order.

In addition to the above-referenced issues, the Order also opened a second phase of the investigation regarding cost recovery issues relating to the data-sharing program. The Order properly recognizes that a cost analysis of the Department's computer matching proposal is important because the electric and gas companies have rates in effect based upon historical assumptions regarding the level of participation on a residential low-income discount rate. Although it is assumed that participation on low-income discount rates will fluctuate, and likely increase as a result of outreach efforts, the implementation of a computer-matching program involving the entirety of a company's residential accounts will likely result in a significant increase in low-income discount rate penetration which, although desirable from a public policy standpoint, has direct impacts on the rates of such company's remaining customers that are not eligible for low-income discount rates.

Because of the impact that implementation of the data-sharing program may have on the rates of the majority of the Company's residential customers, the Company believes that the Department should clarify its Order to postpone implementation of the data sharing program until such time as the Department rules on how companies will recover costs associated with the program's implementation. Resolution of cost recovery issues prior to program implementation is important because, to the extent that electric and gas companies incur costs to implement the Order prior to approval by the

Department of a recovery mechanism for such costs, the companies will be assuming a risk that the Department will deny recovery of some or all of the costs of program implementation. This risk is unnecessary, particularly given the likelihood that the implementation of the Department's order may have to be postponed several months until the EOHHS has received sufficient permission to share its client data, as discussed previously. Accordingly, the Department should clarify its Order to state that implementation of the data-sharing program shall not commence until the Department rules on how jurisdictional companies will be allowed to recover the costs of the program's implementation.

III. CONCLUSION

For the reasons stated above, the Company respectfully requests that the Department grant reconsideration of the Department's directive to jurisdictional gas and electric distribution companies to begin implementation of the data-sharing program, or, in the alternative, clarify the Department's Order regarding the timing of the implementation of the Order, as described herein.

Respectfully submitted,

NSTAR

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